

WORKING GROUP REPORT

CUSC Amendment Proposal CAP006

Non Discrimination

**Prepared by the Governance Amendments Working Group
for submission to the Amendments Panel**

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1.0 SUMMARY AND RECOMMENDATIONS

The Working Group has evaluated the Amendment Proposal against the applicable CUSC objectives but was unable, as a group, to reach a unanimous recommendation on CAP006 – Non - Discrimination. Therefore this report sets out the diverse views of Working Group Members only and the relevant issues that should be consulted on in the Industry.

The report is split between discussion of the principle outlined within the CUSC Amendment Proposal and the detail of the legal text proposed to implement the principle. In general the principle was supported by the majority of the Working Group but there were strong opposing views. In considering the detail of the legal text, the working Group did agree some alternative draft text, which the majority of the group agreed better facilitated the applicable CUSC Objectives and this is presented as an 'Alternative Amendment' within this report.

The CUSC Amendments Panel is invited to note:

- The diverse views within the Governance Amendments Working Group but the majority support for the concept and proposed alternative drafting changes set out below.

And Endorse:

- That the Amendment Proposal and Alternative Amendment be consulted on by National Grid in the wider Industry forum.

2.0 INTRODUCTION

At the 9th November 2001 CUSC Panel meeting British Energy proposed a change to section 8 of the CUSC to introduce the requirement for an Amendment Proposal not to be approved if it unduly discriminated or unduly preferred particular CUSC Parties. This Amendment Proposal was supported by other parties, which are acknowledged by British Energy in the CUSC Amendment Proposal form.

The CUSC Panel determined that the proposal should be considered and evaluated further by a Working Group and the Governance Amendments Working Group (GAWG) was established on the 9th November 2001. For information, at the same time it was also actioned to consider other amendment proposals namely CAP004 – 'Cost Benefit Analysis CAP005 – 'CUSC Panels Role and Reporting', CAP007 – 'Role of Standing Group', CAP008 – 'Codification Errors' each under separate terms of reference and these are considered in other Working Group reports.

This report considers CAP006 – Non discrimination (Annex 1 – Amendment Proposal form) only and summarises the views and issues raised during the course of the Working Group discussions. The Report has been prepared in accordance with the terms of the CUSC. An electronic copy of this document can be found on the National Grid website, at www.nationalgrid.com/uk/indinfo/cusc.

3.0 PURPOSE AND SCOPE OF WORKING GROUP

In accordance with the Terms of Reference for the Working Group (Annex 2), the Working Group considered the British Energy Amendment Proposal CAP006. The Working Group also developed and considered an Alternative Amendment – strictly modified wording of the British Energy proposal – which is described in the report.

4.0 ASSESSMENT AGAINST APPLICABLE CUSC OBJECTIVES

The Applicable CUSC Objectives are defined within Condition C7F of the Transmission Licence as:

- (a) in relation to a proposed modification of the modification procedures, the requirements of paragraph 6 (to the extent that they do not conflict with the objectives set out in paragraph 1); and
- (b) in relation to any other proposed modification, the objectives set out in paragraph 1.

The objectives detailed in paragraph 1 are the efficient discharge by the licensee of the obligations under the Act and licence and to facilitate competition in the generation and supply of electricity and where consistent facilitating competition in the sale, distribution and purchase of electricity.

In relation to this amendment proposal, which details changes to Section 8 of the CUSC, the Working Group agreed that the objectives of (a) above (i.e. Paragraph 6 of the Transmission Licence), is the relevant objective against which this Amendment Proposal should be judged when deciding whether they are better facilitated. In summary paragraph 6 requires the licensee to establish and operate procedures to modify the CUSC itself in order to better facilitate the applicable CUSC objectives and therefore the amendment proposal must better facilitate this process so that the broader objectives of facilitating competition can be achieved.

There were strong, diverse views represented within the group as to whether the proposal as presented did better facilitate the Applicable CUSC Objectives. These views are represented in the following paragraphs.

The principle of making a non-discrimination requirement explicit in general was supported by the majority of the group and the Working Group felt that changes to the CUSC should not unduly discriminate against any particular CUSC party or classes of CUSC parties. Several Working Group members felt that the change reinforced the applicable CUSC objectives and that it would be useful for such consideration to be explicitly addressed during the process and they felt this proposal helped clarify the intent of the objectives.

However, some Working Group members did not believe that it was necessary for this requirement to be explicit within the CUSC or indeed how the introduction of this requirement would actually better facilitate the applicable CUSC objectives. One WG member noted that this was in effect adding another objective to those defined within the Transmission Licence and therefore it was difficult to see how by adding a further objective the current objectives would be better achieved. A member also noted that it was not something that needed to be explicit within the CUSC and felt that this was an issue for the Authority to determine. A member also noted that the Competition Act could be used to determine discrimination and did not feel it was appropriate for inclusion in the CUSC.

One WG member noted that the Balancing Settlement Code has a clause which details that the code should not cause undue discrimination between classes of parties but that there is not a similar clause within the CUSC. There was therefore an inconsistency between the codes which should be resolved.

There was also some discussion on the detail of the text provided by the proposer, which the proposer made clear was only intended to be indicative of the desired changes and it was felt by the group that the drafting in some respects needed to be more facilitating and not impose more obligations.

It was noted that the legal text provided by the proposer for 8.20.5 also put a requirement on the Authority in terms of their action in approving an amendment. It was noted that it was not possible to implement this within CUSC. The Authority had their own statutory duties which they were required to meet.

In view of this the group then considered alternative draft text to reflect the principle and provide a more workable proposal.

5.0 ALTERNATIVE AMENDMENT

5.1 Description of Alternative Amendment

The group agreed that for the purposes of transparency any changes to the proposed draft text should be presented in the Working Group report as an Alternative Amendment. The group also noted that they were required under the terms of reference to give consideration to what might constitute an appropriate definition of non-discrimination for the purposes of the proposed change.

Concern was raised about the requirement to define the term non-discrimination which would be necessary to avoid ambiguity in the requirements. The group discussed this issue and concluded that this was not feasible or appropriate to define the term or place a requirement to consider non-discrimination. The majority of the group felt that the nature of the changes to the CUSC should be for information provision, such as identifying the impact on all parties (i.e.. 'winners' and 'losers'), from a proposal rather than requiring an absolute value judgement, i.e. determining if there is undue discrimination.

The Working Group then considered alternative draft text to reflect the principle and provide a more workable proposal. Such a change may make the proposal more effective and the Group agreed to consider alternative legal text that followed the intent of the proposal.

The draft legal text for the Alternative Amendment is detailed in Annex 4.

5.2 Assessment Against Applicable CUSC Objectives

The majority of the Working Group felt that the redrafting of the legal text contained within the Alternative Amendment would better meet the Applicable CUSC Objectives compared to the Amendment Proposal. It recognises the need to give consideration to implications that amendments to the CUSC may have on CUSC parties or classes of parties so that this information can be presented to the Authority. The text allows the issues to more easily be identified and brought out in the process without making these requirements too rigid.

6.0 PROPOSED IMPLEMENTATION AND TIMESCALES

The Group considered the implementation and timescale issues. Concern was raised over the impact that such a proposed change if implemented would have on active amendment proposals currently being considered. The group noted the concern but concluded that it should be possible for the CUSC Panel to manage this issue at the time as necessary. In this context the Proposal, if implemented, should not be retrospective and only apply to new amendment proposals received after the implementation date. The implementation of the proposal or alternative was at the direction of the Authority but was expected to be as soon as practicable after their decision.

7.0 IMPACT ON CUSC

The proposed change will not have an impact on other parts of the CUSC. The changes required to implement the proposal are detailed in Annex 4 both as detailed

in the original proposal and also as developed by the Working Group as an Alternative Amendment.

It was though noted that currently there are other CUSC Amendment Proposals that are under consideration which could also make changes to the same sections of the CUSC. This will therefore need to be managed by National Grid in an appropriate manner, subject to their approval. In essence though these will only be format issues, such as numbering, rather than substantive conflict to the intent of paragraphs.

8.0 IMPACT ON INDUSTRY DOCUMENTS

8.1 Impact on Core Industry Documents

This amendment proposal will have no impact on other core industry documents.

8.2 Impact on other Industry Documents

This amendment proposal will have no impact on other industry documents.

Annex 1: CUSC Amendment Proposal CAP006

Amendment Proposal [Name of Proposer]

Those wishing to propose an Amendment to the CUSC should do so by filling in this "Amendment Proposal Form" that is based on the provisions contained in Section 8.15 of the CUSC. The form seeks to ascertain details about the Amendment Proposal so that the CUSC Panel can determine more clearly whether the proposal should be considered by a Working Group or go straight to wider National Grid Consultation.

The Panel Secretary will check that the form has been completed, in accordance with the requirements of the CUSC, prior to submitting it to the Panel. If the Panel Secretary accepts the Amendment Proposal form as complete, then he will write back to the Proposer informing him of the reference number for the Amendment Proposal and the date on which the Proposal will be considered by the Panel. If, in the opinion of the Panel Secretary, the form fails to provide the information required in the CUSC, then he may reject the Proposal. The Panel Secretary will inform the Proposer of the rejection and report the matter to the Panel at their next meeting. The Panel can reverse the Panel Secretary's decision and if this happens the Proposer will be informed by the Panel Secretary.

The completed form should be returned to:

Mark Cox
Panel Secretary
Commercial Development
National Grid Company plc
National Grid House
Kirby Corner Road
Coventry, CV4 8JY

Or via e-mail to:

CUSC.Team@uk.ngrid.com

(Participants submitting this form by email will need to send a statement to the effect that the proposer acknowledges that on acceptance of the proposal for consideration by the Amendments Panel, a proposer which is not a CUSC Party shall grant a licence in accordance with Paragraph 8.15.7 of the CUSC. A Proposer which is a CUSC Party shall be deemed to have granted this Licence.)

Proposers Name:

(Name of party making the proposal. An Amendment Proposal may be made by a CUSC Party, a BSC Party or by "energywatch")

British Energy Generation Ltd]

Proposers Representative:

(The name of the person representing the Proposer (and his alternate) for the purposes of the Amendment Process)

Steve Phillips (alternate John Capener)

Organisations Name and Address:

(Organisation on whose behalf the Amendment is proposed)

British Energy Generation Limited, Barnett Way, Barnwood,
Gloucester, GL4 3RS

In addition to BEGL, the following CUSC Parties listed alphabetically below are joint sponsors for this Amendment Proposal:

1. AES Drax Power Limited Selby, North Yorkshire, YO8 8PQ
2. Barking Power Ltd Barking Power Station, Chequers Lane, Dagenham, RM6 6PF
3. Deeside Power Development Company Ltd, Senator House, 85 Queen Victoria Street, London EC4V 4DP
4. Enron Direct Limited Enron House, 40 Grosvenor Place, London SW1X 7EN
5. First Hydro Company Bala House, Lakeside Business Village, St. David's Park, Deeside, Flintshire, CH5 3XJ
6. Humber Power Limited South Humber Bank Power Station, South Marsh Road, Stallingborough, North East Lincolnshire, DN41 8BZ
7. Teesside Power Limited Dunedin House, Columbia Drive, Thornaby, Stockton On Tees, Cleveland, TS17 6 BJ

Capacity in which the Organisation Proposes to make an Amendment:

(i.e. CUSC Party, BSC Party or "energywatch")

CUSC Party

Description of the issue or defect which the proposed Amendment seeks to address:

(This should be in reasonable, but not excessive detail)

Absence of non-discrimination/preference test in amendment process.

Description of the proposed Amendment and of its nature and purpose:

(This should be in reasonable but not excessive detail)

To add provision for an Amendment Proposal not to be approved if it unduly discriminates or unduly prefers particular CUSC Parties.

An indication of those parts of the CUSC which would require amendment in order to give effect to (or would otherwise be affected by) the proposed amendment and an indication of the nature of those amendments or effects.

(This should be given where possible)

Please refer to the attachment for suggested, indicative changes/additions to be incorporated to appropriate clauses of section 8 of the CUSC to give effect to the proposed amendment.

Please note that it is the principle of the Amendment Proposal that is to be reviewed and approved by an appropriate review/consultation process to be decided by the CUSC Amendment Panel.

This indicative text is a suggested solution which may or may not be considered exhaustive in its detail and scope.

Reasons why the Proposer believes that the proposed Amendment would

better facilitate achievement of the Applicable CUSC Objectives as compared with the current version of the CUSC with background information in support thereof.

The Proposer considers that the proposed Amendment would enable proper evaluation of the proposed Amendment and better facilitate achievement of the Applicable CUSC Objectives since it would facilitate effective competition in generation and supply of electricity and facilitate the efficient discharge of NGC's obligations. The Amendment would also bring the CUSC in line with the best regulatory practice of carrying out an assessment of the direct and indirect implications of proposed changes to the equal treatment of all CUSC Parties. The Amendment will improve existing practice and will increase confidence in the CUSC, which is a central part of the framework for the operation of the electricity market and help safeguard against undue discrimination or undue preference. The Amendment will therefore better facilitate competition in the electricity market.

An indication of the impact of the proposed Amendment on Core Industry Documents.

(This should be given where possible)

None

An indication of the impact of the proposed Amendment on relevant computer systems and processes used by CUSC Parties.

(This should be given where possible)

None

A statement to the effect that the Proposer acknowledges that on acceptance of the proposal for consideration by the Amendments Panel a Proposer shall grant a Licence in accordance with Clause 8.15.7 of the CUSC.

(A signature to this effect must be given by a Proposer, which is not a CUSC Party)

Proposer is a CUSC Party

Attachment to Amendment Proposal

See Annex 4

Annex 2: Working Group Terms of Reference and Membership

CAP006: Non-discrimination Governance Working Group - Terms of Reference Paper

Introduction

1. The current CUSC Amendment Process includes no specific requirement for the Amendments Panel and/or any Standing Group/Working Group to undertake any evaluation to ensure that any Amendment Proposals do not unduly discriminate against or unduly prefer any one or any group of persons or class or classes of persons during the development of such Amendment Proposal. CUSC Amendment Proposal CAP006 seeks to rectify this by amending Clauses 8.15.2, 8.17.8, 8.20.2 and 8.20.5 to include a specific requirement for such evaluation. At the 9th November 2001 Amendments Panel meeting, the Amendments Panel determined that a Working Group (the Governance Working Group) should be established to consider Amendment Proposal CAP006. At the Panel Meeting, the Governance Working Group was also actioned to consider Amendment Proposals CAP004, CAP005, CAP007 and CAP008.
2. This paper outlines the process and terms of reference that the Governance Working Group should work to with respect to Amendment Proposal CAP006.

Proposed Membership of the Governance Working Group

3. At the 9th November 2001 Amendments Panel meeting, the Amendments Panel agreed the following membership for the Governance Working Group:

Chair: Nigel Cornwall (Cornwall Consulting)

Other Members: Dick Cecil (London Electricity)
Jane Butterfield (PowerGen)
Malcolm Taylor (AEP)
Mike Metcalfe (National Grid)
Steve Phillips (British Energy)
Richard Ford (St. Clements)
Simon Goldring (British Gas Trading)

Process

4. The Governance Working Group has been established and actioned to consider, inter alia, revisions to the current Amendment Process for evaluating Amendment Proposals. CUSC Amendment Proposal CAP006 refers.
5. Condition C7F (Paragraph 6) of National Grid's Transmission Licence requires the licensee to establish and operate procedures for the modification of the CUSC (including procedures for modification of the modification procedures themselves), so as to better facilitate achievement of the applicable CUSC objectives. In view of this, the Governance Working Group should consider how the proposed Amendment better accomplishes this requirement when compared to the current procedures.
6. The findings of the Working Group should be published on the CUSC Website.

Scope of Work

7. The Governance Working Group should consider the Amendment Proposal tabled by British Energy and consider any Alternative Amendment Proposals raised by the Governance Working Group or any other interested parties.
8. The Governance Working Group should consider, inter alia, how the Proposed Amendment would impact on:
 - (a) the CUSC itself (BE have provided some accompanying, indicative, draft legal text in CAP006); and
 - (b) on other codes/core industry documentation.

9. In considering the Amendment Proposal, the Governance Working Group should also develop a clear and concise definition of non-discrimination that, should the Amendment Proposal be implemented, could be included in Section 11 of the CUSC.

Relationship with Amendments Panel

10. The Working Group shall seek the views of the Amendments Panel before taking on any significant amount of work. The Working Group Chairman should contact the CUSC Panel Secretary.
11. Where the Working Group requires instruction, clarification or guidance from the Amendments Panel, particularly in relation to their Scope of Work, the Working Group Chairman should contact the CUSC Panel Secretary.

Meetings

12. The Working group shall develop and adopt its own internal working procedures and provide a copy to the Panel Secretary for each of its Amendment Proposals.

Reporting

13. The Governance Working Group Chairman should, in line with the CUSC, be responsible for producing a Working Group Report with recommendations. The report should be submitted to the Panel Secretary by 9th February 2002 for circulation to Panel Members and the Conclusions of such report should be presented to the Amendments Panel meeting scheduled for 22nd February 2002. The report should be written with reference to Section 8.17 of The CUSC.
14. In considering the Amendment Proposal, the Governance Working Group should also develop a clear and concise cost-benefit definition that, should the Amendment Proposal be implemented, could be included in Section 11 of the CUSC.

Relationship with Amendments Panel

15. The Working Group shall seek the views of the Amendments Panel before taking on any significant amount of work. The Working Group Chairman should contact the CUSC Panel Secretary.
16. Where the Working Group requires instruction, clarification or guidance from the Amendments Panel, particularly in relation to their Scope of Work, the Working Group Chairman should contact the CUSC Panel Secretary.

Meetings

17. The Working group shall develop and adopt its own internal working procedures and provide a copy to the Panel Secretary for each of its Amendment Proposals.

Reporting

18. The Governance Working Group Chairman should, in line with the CUSC, be responsible for producing a Working Group Report with recommendations. The report should be submitted to the Panel Secretary by 9th February 2002 for circulation to Panel Members and the Conclusions of such report should be presented to the Amendments Panel meeting scheduled for 22nd February 2002. The report should be written with reference to Section 8.17 of The CUSC.

Annex 3: Internal Working Group Procedures

Governance Amendment Working Group (CAP004-008)

Internal Working Procedures (for each CUSC Amendment Proposal)

1. Notes of each meeting will be produced by the Technical Secretary (provided by National Grid) and circulated to the Chairman and Working Group members for review.
 - (a) Meeting notes will be published on the National Grid CUSC Website following the review by Working Group members.
2. The Chairman of the Working Group will provide an update of progress and issues to the Amendments Panel each month as appropriate.
3. Working Group meetings will be arranged for a date acceptable to members of the group and will be held as often as required as agreed by the Working Group, in order to respond to the requirements of the Terms of Reference set by the Amendments Panel.
4. If within half an hour after the time for which the Working Group meeting has been convened the Chairman of the group is not in attendance, the meeting will take place with those present. A Chairman shall be appointed from those members of the Working Group present.
5. A meeting of the Working Group shall not be invalidated by any member(s) of the group not being present at the meeting.

Annex 4: Proposed Text to Modify the CUSC

Amendment Proposal:

1. Amendment Proposal

8.15.2 A proposal made pursuant to Paragraph 8.15.1 shall be submitted in writing and shall contain the following information in relation to such proposal:

- (j) where applicable, a statement to the effect that the Proposer has in preparing the Amendment Proposal ensured that the Amendment would not unduly discriminate against or unduly prefer any one or any group of persons or class or classes of persons.

2. Working Groups

8.17.8 The terms of reference of a **Working Group** must include provision in respect of the following matters:

(...)

- (e) an appropriate evaluation of each and any Proposal to ensure that the Amendment would not unduly discriminate against or unduly prefer any one or any group of persons or class or classes of persons.

3. Amendment Report

8.20.2 The matters to be included in an **Amendment Report** shall be the following (in respect of the **Amendment Proposal**):

- (l) an assessment of whether the Amendment Proposal and any Alternative Amendment would unduly discriminate against or unduly prefer any one or any group of persons or class or classes of persons.

4. Amendment Report

8.20.5 In accordance with the **Transmission Licence**, the **Authority** may approve the **Proposed Amendment** or an **Alternative Amendment** contained in the **Amendment Report** (which shall then be an "**Approved Amendment**" until implemented). If the **Authority** believes that the **Proposed Amendment** (or an **Alternative Amendment**, if any) would not better facilitate achievement of the **Applicable CUSC Objectives**, or would unduly discriminate against or unduly prefer any one or any group of persons or class or classes of persons, then there will be no approval. In such a case, **NGC** will notify **CUSC Parties** and will raise the issue at the next **Amendments Panel** meeting.

Alternative Amendment:

1. Amendment Proposal

8.15.2 A proposal made pursuant to Paragraph 8.15.1 shall be submitted in writing and shall contain the following information in relation to such proposal:

- (j) where applicable, comments on the likely impacts on and the implications for CUSC parties in general (or classes of CUSC parties in general).
- (k) where appropriate, any other comments the proposer wishes to make in support of the proposal.

8.15.3 if a proposal fails in any material respect to provide the information in Paragraph 8.15.2 (excluding Paragraphs (e), (g), ~~and~~ (h) and (j) thereof), the Panel Secretary.....

2. Working Groups

8.17.8 The terms of reference of a **Working Group** must include provision in respect of the following matters:

(...)

- (e) where applicable, an evaluation of each and any Proposal to identify the likely impacts on and the implications for any CUSC parties in general (or classes of CUSC parties in general) of the Amendment.

3. Amendment Report

8.20.2 The matters to be included in an **Amendment Report** shall be the following (in respect of the **Amendment Proposal**):

- (l) where applicable, an assessment of the likely impacts on and the implications for any CUSC parties in general (or classes of CUSC parties in general) of the Amendment Proposal and any Alternative Amendment.

4. Amendment Report

8.20.5 No change to existing CUSC text.

N.B. It is noted that there are other Amendment Proposals being considered at this time which also propose changes to these paragraphs. The proposed text changes are therefore based on the CUSC as existing at this time.